

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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LERVOLTIS LUCKETT,

Petitioner,

v.

PETER HUIBREGTSE, Warden,  
NURSE MORA, ELLEN RAY, Examiner,  
NURSE AMY and DR. COX,

Respondents.  
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ORDER

08-cv-449-slc

On October 29, 2008, I denied petitioner Lervoltis Lockett's request for leave to proceed in forma pauperis on his Eighth Amendment claim for deliberate indifference to a serious medical need. Judgment was entered in favor of defendants Peter Huibregtse, Nurse Mora, Ellen Ray, Nurse Amy and Dr. Cox on October 30, 2008. On December 4, 2008, I granted petitioner's request for an extension of time to file a notice of appeal. Now he has filed a notice of appeal. Because he has not paid the \$455 fee for filing an appeal, I presume he wishes to proceed in forma pauperis.

A district court has authority to deny a request for leave to proceed in forma pauperis on appeal under 28 U.S.C. § 1915 for one or more of the following reasons: the petitioner

has not established indigence, § 1915(a)(1); the appeal is in bad faith, § 1915(3); or the petitioner is a prisoner and has earned three strikes, § 1915(g). Sperow v. Melvin, 153 F.3d 780 (7th Cir. 1998).

In Lucien v. Roegner, 682 F.2d 625, 626 (7th Cir. 1982), the court of appeals instructed district courts to find bad faith where a petitioner is appealing the same claims the court found to be without legal merit in denying petitioner leave to proceed on his complaint. Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000). Because petitioner is attempting to raise on appeal the same legally meritless claim he raised in his complaint in this court, I must certify his appeal as not being taken in good faith. Therefore, his request for leave to proceed in forma pauperis on appeal will be denied.

If petitioner intends to challenge this court's certification that his appeal is not taken in good faith, he has 30 days from the date he receives this order in which to file with the court of appeals a motion for leave to proceed in forma pauperis on appeal. His motion must be accompanied by a copy of the affidavit prescribed in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order. Petitioner should be aware that if the court of appeals agrees with this court that the appeal is not taken in good faith, it will send him an order requiring him to pay all of the filing fee by a set deadline. If petitioner fails to pay the fee within the deadline set, the court of appeals ordinarily will dismiss the appeal and order this court to arrange for collection of the fee from petitioner's prison account.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on appeal is DENIED and I certify that petitioner's appeal is not taken in good faith. The clerk is directed to make sure that petitioner's obligation to pay the \$455 is reflected in the court's financial records.

Entered this 11<sup>th</sup> day of December, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge